

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:09CR52**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
DARRELL EUGENE BANKS.)	
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THIS MATTER is before the court upon the government's Motion to Disclose Alibi Defense. Rule 12.1, Federal Rules of Criminal Procedure, provides as follows:

(a) Government's Request for Notice and Defendant's Response.

(1) Government's Request.

An attorney for the government **may request** in writing that the defendant notify an attorney for the government of any intended alibi defense. The request must state the time, date, and place of the alleged offense.

Fed.R.Crim.P. 12.1(a)(1)(emphasis added). As the Rule provides, the government may serve defendant with a Request for Notice as there is no requirement or provision for court intervention in the rule. Put another way, the relief the government has sought by way of motion is relief that has already been provided for by rule, making court intervention a useless act. It is only when a defendant fails to make the required response that court intervention on behalf of the government is allowed:

(e) Failure to Comply.

If a party fails to comply with this rule, the court may exclude the

testimony of any undisclosed witness regarding the defendant's alibi.
This rule does not limit the defendant's right to testify.

Fed.R.Crim.P. 12.1(e). To the extent the government has filed its demand as a motion, the request will be denied and otherwise deemed to be a Demand for Notice under Rule 12.1(a)(1).

ORDER

IT IS, THEREFORE, ORDERED that the government's Motion to Disclose Alibi Defense (#12) is **DENIED** only insofar as affirmative relief from the court is sought, and such motion is **DEEMED** to be a Demand for Notice under Rule 12.1(a)(1).

Signed: October 13, 2009

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Dennis L. Howell
United States Magistrate Judge

